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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DARLENE IBARRA, Defendant and Appellant.	B236419 (Los Angeles County Super. Ct. No. LA066743)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph A. Brandolino, Judge. Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stacy S. Schwartz and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

After the trial court denied the motion of defendant and appellant Darlene Ibarra to suppress, filed pursuant to Penal section 1538.5,[1] defendant plead no contest to second degree commercial burglary (§ 489) and identity theft (§ 530.5, subd. (a)). On appeal, defendant contends that trial court committed reversible error by denying her suppression motion. We affirm the judgment.

BACKGROUND

A. Factual Background[2]

Officer Jeppson testified that in December 2010, he investigated the theft of a wallet and purchase of an iPod. On November 30, 2010, Nicole Medoff was at an Albertson store when she lost her wallet. Medoff filed a police report after calling the credit card company and attempting to cancel all of her credit cards. Medoff had been told that a purchase was made at a Radio Shack store using one of her credit cards.

Officer Jeppson went to the Albertson store, and the store's director told Officer Jeppson that a lady came to the store to shoplift with a young boy. Officer Jeppson therefore reviewed surveillance video that showed a lady, who Officer Jeppson identified as defendant, and a boy. The surveillance footage showed defendant and the boy putting something into a backpack. The boy left the store without paying for the item, and defendant went to the cash register to make a purchase.

The manager at the Radio Shack store gave Officer Jeppson a description of a short Hispanic woman who was with a child, who left in a dark blue Nissan Quest. The

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[1] All statutory citations are to the Penal Code unless otherwise noted.

[2] Pursuant to the applicable standard of review discussed below, we state the facts in the light most favorable to the prosecution as the prevailing party. (*People v. Zamudio* (2008) 43 Cal.4th 327, 342.) The facts are taken from the June 28, 2001, hearing on the motion to suppress evidence and, unless otherwise indicated, are from the testimony of Angeles Police Department Officer James Jeppson.

woman depicted on the Albertsons' store surveillance video appeared to fit the description of the woman given to Officer Jeppson by the Radio Shack manager.

Officer Jeppson viewed additional Albertsons's store surveillance video showing defendant going to the pharmacy counter as Medoff was leaving it. A pharmacist identified defendant by name to Officer Jeppson. Additional surveillance video showed defendant leaving the Albertsons' store and getting into a dark-colored Nissan Quest and leaving the parking lot. Officer Jeppson determined that defendant was the registered owner of the Nissan Quest he saw in the surveillance video, and was a possible suspect in the theft of the wallet and purchase of an iPod. Officer Jeppson also determined where defendant lived.

On December 1, 2010, Officer Jeppson went to defendant's house. When Officer Jeppson knocked on the door to the residence, defendant's mother, Norma Ibarra, answered the door. At the residence door with Officer Jeppson were Los Angeles Police Department Officer Reyes and Detective Russell, all of whom were dressed in plain clothes. They all identified themselves to mother, presenting mother with their badges. Mother said defendant was not home because defendant was in the hospital. Officer Jeppson asked mother if he and the officers could go inside the residence to talk to mother about a matter, and mother said yes.

Officer Jeppson testified that, "[Mother] said she lived at the residence with [defendant, son], and I believe there was—I want to say there was two more children at the residence too, if I'm not mistaken." The following exchange occurred during the cross-examination of Officer Jeppson: "[Defendant's counsel:] Now [mother] who answered the door . . . explained that she did not live at the residence, correct? [Officer Jeppson:] If I remember correctly, she told us that she did live at this residence. [Defendant's counsel:] There was some hesitation there. So is it fair to say that, as you sit here today, you're not sure? [Officer Jeppson:] I'm fairly confident that I am sure that she said that she did live at the residence."

Son testified that at the time of the search he was 13 years old, and mother was staying in the residence for a week to take care of him while defendant was in the

hospital. Mother testified that she had four-year-old twin grandchildren who were also living in the residence.

The officers entered the residence and when they were just on the other side of the residence door, Officer Jeppson asked mother if she knew anything about a missing wallet. Mother responded yes, that defendant had told her that defendant found a wallet the previous night. Officer Jeppson asked mother if she would look for the wallet, and she agreed.

The officers followed mother as she searched for the wallet. During the course of the search, they went into the rear of the residence and saw a dark grey Nissan Quest parked in the garage. Mother testified that she never told the officers to leave.

Officer Jeppson testified that as the officers started to leave the garage, defendant's son, S.P., approached and started talking to them. When the officers asked son if he knew anything about a wallet, son became "really scared," responded yes, and shouted that there was no money or identification in the wallet. The officers told son that there was a letter inside the wallet that had great sentimental value to the owner. The officers asked son if he could find the wallet, and son responded yes.

Officer Jeppson and mother testified that Officer Reyes followed son upstairs and retrieved the wallet from son's bedroom. The wallet contained items with Medoff's name.

Detective Russell asked son if he knew where the iPod that was acquired with the credit card was located, and son looked for it but could not locate it. Detective Russell gave son his cellular telephone number and asked son to call if he found the iPod. Thereafter, son called Detective Russell and said he found the iPod. Officer Jeppson returned to the residence and recovered the iPod from son.

B. Procedural Background

The District Attorney of Los Angeles County filed an information charging defendant in count 1 with second degree commercial burglary in violation of section 459,

in count 2 with identity theft in violation of section 530.5, subdivision (a), and in count 3 with theft in violation of section 484e, subdivision (d).

Defendant pled not guilty, and the trial court denied defendant's motion to suppress filed pursuant to section 1538.5. The trial court granted the prosecutor's motion to reduce counts one and two to misdemeanors. Defendant withdrew his not guilty plea and plead no contest to counts one and two, and the trial court dismissed count three. The trial court placed defendant on summary probation for three years, and ordered defendant to perform 100 hours of community service.

C. Motion to Suppress

Defendant filed a notice of motion to suppress evidence, pursuant to section 1538.5. The motion sought "to suppress any and all evidence, physical or verbal, of [son] allegedly being in possession of a stolen purse, of [son'] statements, of . . . defendant's statements and of the officers' observations of defendant's vehicle seized as a result of an illegal search of. . . defendant's residence on December 1, 2010."

At the hearing to take argument on defendant's motion, the trial court denied defendant's motion. The trial court stated that the officers' conduct amounted to a search and they needed consent to be in the house. The trial court noted that although the police officers went into the garage and searched defendant's vehicle, nothing was found in it. The officers did see a Nissan vehicle.

The trial court found Officer Jeppson's testimony credible and mother's testimony not credible. The trial court also stated that mother told the officers that she lived there, and mother therefore had apparent authority to consent to the search. The trial said, "the officer did say that [mother] said she lived there. I think . . . based on that, she had, according to what the officers had in their head—a reasonable person I think would believe that she had the authority to consent, and I don't think there's anything equivocal about what would happen. [¶] [The officers] went to the door, and they asked if they could come in. [Mother] let them in. [The officers] talked with her, and there's no threatening of her in any way. She was going along with them—you know, they asked

her if she would—could look in the garage. All along, I think she was consenting. I don't think there's anything equivocal about it. And I don't think her will was overborne in any way. There were no threats, or anything like that, so I think the consent is valid."

The trial court stated that son was credible when he testified that at the time of the search mother was staying in the residence for a week while defendant was in the hospital. The trial court found that mother had actual authority to consent to the search because for a week she was "entrusted with complete control over the domicile" and the children.

The trial court also stated that, "when [son] comes home, he's scared, but there's nothing involuntary about what he does. He still cooperates with the officers. And he clearly has authority to go into his room." The trial court stated that son "clearly had apparent and actual authority to go into his room and . . . give consent and get something from his room . . . ."

The trial court stated further that, "And then as far as the iPod goes, you know, the question then becomes whether that's even related to the entry into the house, and, arguably—you know, again, since I'm finding that there's valid consent and there was actual and apparent authority, then even if you can argue, which I'm not sure you can, that [son] calling the officers after they leave and telling them, 'I have the iPod. Come get—come get it' and then they come back and get the iPod from him, if that's related to the search, I'm not sure . . . if it actually flows from the initial search, but if it arguably does, then that's certainly valid."

DISCUSSION

Defendant contends that trial court committed reversible error by denying her suppression motion. We disagree.

A. Standard of Review

"Defendant's challenge to the trial court's ruling denying his motion to suppress presents a mixed question of law and fact that is subject to a two-tier standard of review.

'The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]' [Citation.] 'A ruling on a motion to suppress generally implies "a finding of fact favorable to the prevailing party on each ground or theory underlying the motion." [Citation.]' [Citation.]" (*People v. Sardinas* (2009) 170 Cal.App.4th 488, 493.) "In determining whether substantial evidence supports the trial court's findings, '[i]f there is conflicting testimony, we must accept . . . the version of events most favorable to the People, to the extent the record supports them.' (*People v. Zamudio, supra,* 43 Cal.4th at p. 342.)" (*People v. Boulter* (2011) 199 Cal.App.4th 761, 767.)

B. General Principles

"The Fourth Amendment to the United States Constitution guarantees freedom from unreasonable search and seizure. (U.S. Const., 4th Amend.; U.S. Const., 14th Amend.; *People v. Rogers* (2009) 46 Cal.4th 1136, 1156 [95 Cal.Rptr.3d 652, 209 P.3d 977]; see also Cal. Const., art. I, §§ 13, 15.) Evidence obtained in violation of this right is inadmissible in a criminal trial. (*Mapp v. Ohio* (1961) 367 U.S. 643, 654-655 [6 L.Ed.2d 1081, 81 S.Ct. 1684].) A defendant may make a motion to suppress such evidence under Penal Code section 1538.5. 'Because a warrantless … search and seizure is presumptively unreasonable under the Fourth Amendment [citation], the government bears the burden of establishing that exigent circumstances or another exception to the warrant requirement justified the entry. [Citation.]' (*People v. Rogers, supra,* 46 Cal.4th at p. 1156.)" (*People v. Boulter, supra,* 199 Cal.App.4th at p. 768.)

"'The touchstone for all issues under the Fourth Amendment and article I, section 13 of the California Constitution is reasonableness. [Citations.]' (*Ingersoll v. Palmer* [(1987)] 43 Cal.3d [1321,] 1329.) 'The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.' (*Bell v.*

Wolfish (1979) 441 U.S. 520, 559 [60 L. Ed. 2d 447, 99 S. Ct. 1861].)
"'Reasonableness . . . is measured in objective terms by examining the totality of the circumstances" [citation], and "whether a particular search meets the reasonableness standard '"is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."'" [Citations.]' (*People v. Robinson* (2010) 47 Cal.4th 1104, 1120 [104 Cal.Rptr. 3d 727, 224 P.3d 55]; see *Bell v. Wolfish, supra*, 441 U.S. at p. 559 ['Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.'].)" (*People v. Boulter, supra*, 199 Cal.App.4th at p. 768.)

C. Analysis

"A warrant is required unless certain exceptions apply, including the exception that permits consensual searches. [Citations.]" (*People v. Jenkins* (2000) 22 Cal.4th 900, 971.) "As the United States Supreme Court explains, 'when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.' (*United States v. Matlock* [(1974)] 415 U.S. [164,] 171, fn. omitted [94 S.Ct. [988,] 993]; *see Illinois v. Rodriguez* (1990) 497 U.S. 177, 188-189 [110 S.Ct. 2793, 2801-2802, 111 L.Ed.2d 148] (*Rodriguez*).) The 'common authority' theory of consent rests 'on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.' (*United States v. Matlock, supra*, 415 U.S. at p. 171, fn. 7 [94 S.Ct. at p. 993]; *People v. Haskett* [(1982)] 30 Cal.3d [841,] 856.)" (*People v. Woods* (1999) 21 Cal.4th 668, 676.)

The trial court found that son was credible when he testified that at the time of the search mother was staying in the residence for a week to take care of him while defendant was in the hospital.] The trial court also found that mother was "entrusted with complete control over the domicile" and the children for a week and, therefore, she had actual authority to consent to the search.

Defendant argues that although there is evidence that mother was the caretaker of the children, there is no evidence that she was the caretaker of the residence. We reject defendant's argument. It would be reasonable for the trial court to infer that, as the only adult, mother's one week presence in the residence to care for 13-year-old son and presumably her other four-year-old grandchildren, left her in charge of the residence and could determine who could come into it.

Mother also had apparent authority to consent to the search. Mother told the officers that she lived at the residence with defendant, son, and two other children. It was reasonable for the officers to believe mother had the authority to consent to the search.

"[O]fficers may rely on the consent of a person who they 'reasonably and in good faith believe[] . . . ha[s] the authority to consent' to a particular search. (*People v. Ledesma* (2006) 39 Cal.4th 641, 703 [47 Cal.Rptr. 3d 326, 140 P.3d 657].) Such apparent authority to consent exists if '"the facts available to the officer at the moment . . . 'warrant a man of reasonable caution in the belief'" that the consenting party had authority over the premises.' (*Illinois v. Rodriguez*, *supra*, 497 U.S. at p. 188.)" (*In re D.C.* (2010) 188 Cal.App.4th 978, 983.)

Co-occupants with joint access or control to property assume the risk police may be permitted to search by a co-occupant sharing the property. (*People v. Bishop* (1996) 44 Cal.App.4th 220, 237.) "Cases from a number of jurisdictions have recognized that a guest who has the run of the house in the occupant's absence has the apparent authority to give consent to enter an area where a visitor normally would be received. (See, e.g., *United States v. Turbyfill* (8th Cir. 1975) 525 F.2d 57; *Nix v. State* (Alaska 1981) 621 P.2d 1347; *State v. Thompson* (Minn. 1998) 578 N.W.2d 734; see also 4 La Fave, Search and Seizure (4th ed. 2004) § 8.5(e).) Furthermore, the police may assume, without

further inquiry, that a person who answers the door in response to their knock has the authority to let them enter. (See *Mann v. Superior Court* (1970) 3 Cal.3d 1 [88 Cal.Rptr. 380, 472 P.2d 468] [entry was consensual where the police knocked on the door of the defendant's house, in which a party was taking place, and voices inside called out 'come in'].)" (*People v. Ledesma, supra,* 39 Cal.4th at pp. 703-704.)

The court in *United States v. Ayoub* (6th Cir. 2007) 498 F.3d 532 stated that, "The exception for consent extends even to entries and searches with the permission of a co-occupant whom the police reasonably, but erroneously, believe to possess shared authority as an occupant. *Georgia v. Randolph*, 547 U.S. 103, 109, 126 S.Ct. 1515, 164 L.Ed.2d 208 (2006) (citing *Rodriguez*, [*supra*,] 497 U.S. at [p.] 186). In other words, a search consented to by a third party without actual authority over the premises is nonetheless valid if the officers reasonably could conclude from the facts available that the third party had apparent authority to consent to the search. See *Rodriguez*, [*supra*,] 497 U.S. [at pp.] 186-89." (*United States v. Ayoub, supra,* 498 F.3d at p. 537.)

Defendant contends that there is not sufficient evidence to support a finding that mother told the officers she lived at the residence because Officer Jeppson "could not specifically recall and could only speculate that he was 'fairly confident' that [mother] said she also lived there, along with [defendant's] children." Officer Jeppson testified however that, "[Mother] said she lived at the residence" with defendant and son. On cross-examination, Officer Jeppson testified that, "I am fairly confident that I am sure that she said that she did live at the residence." The trial court's finding is supported by substantial evidence.

Defendant contends that assuming mother consented to the officers entering the house, there is no evidence that mother gave consent to the officers "to move about the home to conduct a search." However, once the officers were in the house, mother impliedly consented to allow them to move about the home by not objecting when the officers followed her as she searched for the wallet, or when Officer Reyes followed son upstairs to his bedroom.

Consent to enter and to search may be express or implied and may be demonstrated by conduct or by words. (*People v. Frye* (1998) 18 Cal.4th 894, 990, disapproved on other grounds as stated in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; *People v. Panah* (2005) 35 Cal.4th 395, 467; *People v. Martino* (1985) 166 Cal.App.3d 777, 791.) In *United States v. Griffin* (7th Cir. 1976) 530 F.2d 739, 743, the defendant initially slammed the door on the officers the first time they knocked, but then opened the door and stepped back in response to the second knock. The court held that the defendant thereby consented to the officers' entry into the residence. The court also stated that, "The events immediately following the officers' entry also support this conclusion. Once the officers stepped inside the door, [the defendant] turned and walked into the living room of the apartment leading the officers who were following close behind. At no time did [the defendant] or any other person in the apartment object in any way to the officers' presence inside the apartment." (*Id*. at p. 743 & fn. 3; *United States v. Mejia* (9th Cir. 1991) 953 F.2d 461, 466 [although the defendant's wife's permission to enter the house did not include permission to enter every room in the home, her failure to object to their following her into a bedroom constituted implied consent to enter that room].) Mother gave her implied consent to allow the officers to move about the home.

Defendant also contends that mother merely acquiesced to a show of authority and did not voluntarily consent to the search because she was elderly and three officers were standing at the door of the residence displaying their badges. The trial court found that mother's "will was [not] overborne in any way. There were no threats, or anything like that, so I think the consent is valid." We agree with the trial court.

Whether consent was given voluntarily or was the product of coercion on the part of the searching officers is a question of fact to be determined from the totality of the circumstances. (*People v. Jenkins, supra,* 22 Cal.4th at p. 973; *People v. Shandloff* (1985) 170 Cal.App.3d 372, 383.) "The People ha[ve] the burden of proving that [a person's] manifestation of consent was the product of his free will and not the submission to an express or implied assertion of authority." (*People v. Shandloff, supra,* 170 Cal.App.3d at p. 383.)

Defendant relies on *Bumper v. North Carolina* (1968) 391 U.S. 543, in support of her contention that mother did not voluntarily consent to the search. In that case, the defendant's cotenant consented to a search of their residence after the officer conducting the search told her that he had a warrant. At the suppression hearing, the prosecutor relied on the resident's consent, not on the search warrant. The court held the consent involuntary. "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent." (*Id.* at p. 550.) *Bumper* is inapposite because the officers here did not claim present authority to search under a warrant, nor was mother coerced to consent to the search. Mother voluntarily consented to the search.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.